

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**MILITARY CERTIFIED RESIDENTIAL
SPECIALIST, LLC**, a Delaware Limited
Liability Company, and **MILRES, LLC**,
a Delaware Limited Liability Company,

Plaintiffs,

V.

FAIRWAY INDEPENDENT MORTGAGE
CORPORATION and
AMERICAN WARRIOR INITIATIVE, INC.,

Defendants.

)
)
)
) C.A. No.
) 1:16-cv-00166-JFB-SRF

JURY TRIAL DEMANDED

PLAINTIFFS' ANSWER TO AMENDED COUNTERCLAIMS

Plaintiffs Military Certified Residential Specialist, LLC And MilRES, LLC ("Plaintiffs"),
by and through their undersigned counsel, hereby answer the Counterclaims asserted by
Defendant Fairway Independent Mortgage Corporation ("Fairway") and Defendant American
Warrior Initiative, Inc. ("AWI") (collectively "Defendants") as follows:

FIRST COUNTERCLAIM

**(Cancellation of U.S. Trademark Registration No. 4,741,044
for "Military Certified Residential Specialist")**

93. Plaintiffs incorporate the foregoing responses as if fully set forth herein.
94. Defendants' averment states a conclusion of law to which no response is required.

In the alternative, it is denied.

95. Plaintiffs are without sufficient information to either admit or deny this averment.

On that basis, it is denied.

96. Plaintiffs are without sufficient information to either admit or deny this averment.

97. Denied as stated.

98. Denied.

99. Plaintiffs are without sufficient information to either admit or deny this averment.

100. Plaintiffs are without sufficient information to either admit or deny this averment.

101. Denied.

102. Defendants' averment states a conclusion of law to which no response is required.

In the alternative, it is denied.

103. Defendants' averment states a conclusion of law to which no response is required.

In the alternative, it is denied.

104. Denied.

SECOND COUNTERCLAIM

**(Cancellation for Fraud in the Procurement of
U.S. Trademark Registration No. 4,169,442 for "Military Residential Specialist" and
U.S. Trademark Registration No. 4,741,044 for "Military Certified Residential Specialist")**

105. Plaintiffs incorporate the foregoing responses as if fully set forth herein.

106. Admitted.

107. Admitted.

108. Admitted.

109. Admitted.

110. Admitted.

111. Admitted.

112. Admitted.

113. This averment refers to a document, the content of which speaks for itself.

114. This averment refers to a document, the content of which speaks for itself.
Denied that Plaintiffs' representations are inconsistent.

115. Denied.

116. Defendants' averment states a conclusion of law to which no response is required.
In the alternative, it is denied.

117. Defendants' averment states a conclusion of law to which no response is required.
In the alternative, it is denied.

118. Denied.

THIRD COUNTERCLAIM
(Cancellation of U.S. Trademark Registration No. 4,169,442 for "Military Residential Specialist" as Generic or so Descriptive as to be Unregistrable)

119. Plaintiffs incorporate the foregoing responses as if fully set forth herein.

120. Admitted.

121. Admitted.

122. Admitted.

123. Admitted that the averment states one way the "military residential specialist" is used.

124. This averment refers to a document, the content of which speaks for itself.

125. Defendants' averment states a conclusion of law to which no response is required.
In the alternative, it is denied.

126. Denied.

127. Defendants' averment states a conclusion of law to which no response is required.
In the alternative, it is denied.

128. Denied.

129. Defendants' averment states a conclusion of law to which no response is required.

In the alternative, it is denied.

130. Denied.

FOURTH COUNTERCLAIM

**(Declaratory Judgment of Non-Infringement, Invalidity, and Unenforceability
Due to Lack of Secondary Meaning in "Military Residential Specialist" and
Cancellation of U.S. Trademark Registration No. 4,169,442 therefor)**

131. Plaintiffs incorporate the foregoing responses as if fully set forth herein.

132. This averment refers to a document, the content of which speaks for itself.

133. This averment refers to a document, the content of which speaks for itself.

134. This averment refers to a document, the content of which speaks for itself.

135. Defendants' averment states a conclusion of law to which no response is required.

In the alternative, it is denied.

136. Defendants' averment states a conclusion of law to which no response is required.

In the alternative, it is denied.

137. Defendants' averment states a conclusion of law to which no response is required.

In the alternative, it is denied.

138. Plaintiffs are without sufficient information to either admit or deny this averment.

On that basis, it is denied.

139. Defendants' averment states a conclusion of law to which no response is required.

In the alternative, it is denied.

140. Denied.

141. Denied.

FIFTH COUNTERCLAIM

**(Declaratory Judgment of Non-Infringement, Invalidity, and Unenforceability
Due to Lack of Secondary Meaning in "Military Certified Residential Specialist" and
Cancellation of U.S. Trademark Registration No. 4,741,044 therefor)**

- 142. Plaintiffs incorporate the foregoing responses as if fully set forth herein.
- 143. This averment refers to a document, the content of which speaks for itself.
- 144. This averment refers to a document, the content of which speaks for itself.
- 145. This averment refers to a document, the content of which speaks for itself.
- 146. Defendants' averment states a conclusion of law to which no response is required.

In the alternative, it is denied.

- 147. Defendants' averment states a conclusion of law to which no response is required.

In the alternative, it is denied.

- 148. Plaintiffs are without sufficient information to either admit or deny this averment.

On that basis, it is denied.

- 149. Defendants' averment states a conclusion of law to which no response is required.

In the alternative, it is denied.

- 150. Denied.

- 151. Denied.

SIXTH COUNTERCLAIM

(Declaratory Judgment of Non-Infringement of "MilRES")

- 152. Plaintiffs incorporate the foregoing responses as if fully set forth herein.
- 153. Admitted.
- 154. Denied that "Certified Military Residential Specialist" is merely descriptive.

Otherwise, admitted.

- 155. Denied.

156. Denied.

157. Denied.

158. Denied.

159. Denied.

160. Denied.

161. Denied.

162. Denied.

SEVENTH COUNTERCLAIM
(Declaratory Judgment – All Counts)

163. Plaintiffs incorporate the foregoing responses as if fully set forth herein.

164. Denied.

165. Denied.

166. Denied.

167. Defendants' averment states a conclusion of law to which no response is required.

In the alternative, it is denied.

168. Denied.

169. Admitted. Plaintiffs reserve all rights in connection to amending their Complaint to add a claim for copyright infringement.

170. Admitted.

171. Defendants' averment states a conclusion of law to which no response is required.

In the alternative, it is denied.

172. Denied.

173. Denied.

EIGHTH COUNTERCLAIM

(Violation of Del. Deceptive Trade Practices Act, 6 Del. C. § 2531 *et seq.*)

174. Plaintiffs incorporate the foregoing responses as if fully set forth herein.

175. Denied.

176. Denied.

177. Denied.

NINTH COUNTERCLAIM

(Common Law Commercial Disparagement)

178. Plaintiffs incorporate the foregoing responses as if fully set forth herein.

179. Denied.

180. Denied.

181. Denied.

182. Denied.

Plaintiffs request that judgment be granted in their favor on all of Defendants' Counterclaims.

AFFIRMATIVE DEFENSES

- 1) Defendants' counterclaims fail to state claims upon which relief may be granted.
- 2) Defendants' counterclaims are barred by Defendants' fraud or own culpable conduct.
- 3) Defendants' counterclaims are barred by laches.
- 4) Defendants' counterclaims are barred by the applicable statutes of limitations.
- 5) Defendants' counterclaims are barred by the doctrine of waiver.
- 6) Defendants' counterclaims are barred by the doctrine of estoppel.

Plaintiffs reserve the right to amend or supplement these defenses based on further investigation and discovery.

SEITZ, VAN OGTROP & GREEN, P.A.

/s/ Jared T. Green

R. KARL HILL (DE2747)

JARED T. GREEN (DE5179)

222 Delaware Avenue, Suite 1500

P. O. Box 68

Wilmington, DE 19899

Phone: (302) 888-0600

Fax: (302) 888-0606

khill@svglaw.com

jtgreen@svglaw.com

Attorneys for Plaintiffs

Military Certified Residential Specialists, LLC and

MilRES, LLC

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